IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

:: ORDER ::

S.B. CIVIL WRIT PETITION NO.1354/2005-STATE OF RAJASTHAN & ORS VS. CHANDRA SHUBH YATRA COMPANY LTD & ORS. UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : 6.4.2005.

PRESENT

HON'BLE MR. PRAKASH TATIA,J.

REPORTABLE

Mr. Vineet Kothari]
Mr. B.L.Tiwari, Dy.GA], for the petitioners.
Mr. Dinesh Mehta, for the respondents.

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Heard learned counsel for the parties.

The few facts relevant for the purpose of deciding this writ petition are that plaintiff-respondent, who is running several buses, filed the suit for rendition of accounts and for injunction

before the Civl Court, namely, Civil Judge (Sr.Div.), Sri Ganganagar. There are several allegations in the suit against the taxing authorities and according to plaintiff-non-petitioner, the defendant-petitioner are not giving the true and correct account of the road tax and special road tax to the plaintiff-non-petitioner. The plaintiff in the suit prayed that petitioner be directed to give statement of accounts about the road tax and special tax and, thereafter, adjust the accounts by giving credit and debit of the amount which has been paid by the plaintiff-non-petitioner. The plaintiff prayed that till the account is settled, the defendant be restrained from obstructing operation of the buses of the plaintiff.

The plaintiff also filed an application for grant of temporary injunction under Order 39 Rule 1 and 2 CPC, which appears to have been registered as Civil Misc. Case No.6/2004 and in that petition an interim order was passed by the court on 3.2.2004 that till the complete account (of tax) is shown to the plaintiff, the defendant shall not stop the plying of the buses of the plaintiff-company. It is not clear from the record that whether that order either was vacated or modified, but the trial court in its order-sheet dated 8th July, 2004 recorded in the Civil Original Case no.14/2004 clarifying that at present there is no stay order against the tax recovery by the defendants. However, the trial

court observed that DTO, Ganganagar shall adopt one mode against all the vehicles in the matter of recovery of taxes and he should not act carelessly. What was the necessity for issuing such direction in civil suit filed by one individual is not clear from the facts and from the order of the trial court.

Be that as it may, the petitioner-defendant submitted an application under Order 7 Rule 11 CPC before the trial court. The petitioner-defendant raised preliminary objection about the maintainability of the suit as filed by the plaintiff on the ground that suit is barred under Section 16 of the Rajasthan Motor Vehicles Taxation Act, 1951. The trial court by order dated 26th March, 2004 (Annex.2) observed that the objection can be raised in the written statement and only on this ground, the trial court rejected the petitioner-defendant's application.

The said order dated 26.3.2004 was not challenged by the petitioner except by filing this writ petition when the trial court passed the order on 22.2.2005 to release 7 out of 9 buses of the non-petitioner-plaintiff. However, it appears that the petitioner preferred SBCW No.4123/2004 and in the said writ petition, the petitioner also prayed for quashing the proceedings pending before the Civil Court on the ground that Civil Court has no jurisdiction in the matter of taxation and permits. The writ

petition of the petitioner was dismissed by this Court after observing that the petitioner had filed application under Order 7 Rule 11 CPC and that has been dismissed and the order of dismissal of said application has not been challenged by the petitioner by taking appropriate remedy before the competent court of law. However, this Court also observed that so far as quashing of order Anex.4 dated 14th July, 2004 is concerned, some order has been passed by the trial court on 8th July, 2004. In view of the above subsequent order, the writ petition of the petitioner was dismissed.

It will be worthwhile to mention here that the non-petitioner-plaintiff also preferred one writ petition being writ petition no.4014/2004 wherein the plaintiff in addition to other reliefs, claimed the injunction against the defendant-petitioner for restraining them for penal action of seizing the vehicles of the plaintiff and releasing the 9 vehicles, which were already seized by the defendant-petitioner during pendency of the civil suit. The plaintiff-non-petitioner further sought directions against the respondents for passing appropriate assessment order. The plaintiff's writ petition no.4014/2004 too was dismissed by this Court on the same day, i.e., on 26th Oct., 2004 after holding that making assessment for computation of tax, is within the jurisdiction of the authorities under the relevant Act and Rules,

and assessment is to be made only by taking into account all the facts which are required to be taken into account, and by excluding the facts and circumstances which are not to be taken into account. This Court further observed that adjudication thereof is to be made by the authorities concerned and that adjudication is subject to challenge before the hierarchy of authorities under the relevant law and as such factors are not required to be adjudicated by this Court in writ petition. It will be worthwhile to mention here that this Court also held, as under:

> "So far as restraining the respondents from taking penal action is concerned, according to averments made in para no .3 of the writ petition, 9 vehicles have been seized only after date of submission of annexure P-2. In these circumstances, I do not find any sufficient ground to accept this prayer either."

After failing in getting relief for release of buses from this Court, the non-petitioner-plaintiff submitted an application before the trial court on 18.12.2004 for release of same seized buses. This application appears to has been filed in the Civil Original Suit and not in the Civil Misc. Case No.6/2004 wherein interim order was sought by the plaintiff. In this application, the plaintiff after giving reference of the order dated 3.2.2004 stated that plaintiff's 9 buses were seized on account of non-payment of

dues. The plaintiff submitted that the mandatory provisions of law was not followed for doing so and the defendants have not submitted statement of account. The plaintiff is suffering great hardship because of the fact that plaintiff's is paying salary to its employees and by the time, the vehicles will be damaged and there is no purpose for keeping the vehicles with the defendant-petitioner. The plaintiff prayed that he is ready to accept any condition, which may be imposed by the court, but the order may be passed for release of the vehicles. The application was opposed by the petitioner-defendant. The trial court passed the order on 22.2.2005 on plaintiff's application and ordered that seven vehicles, which have been seized by the petitioner-defendant be released on plaintiff's furnishing security of Rs. 50 lacs.

The petitioner-defendant submitted review petition before the trial court against the trial court’s order to release plaintiff’s buses dated 22.5.2004. It appears from the order-sheet dated 1.3.2005, copy of which is placed on record as Annex.12 that the review petition was filed on 1.3.2005 by the petitioner-defendant and delivered the copy of the review petition to learned counsel for the plaintiff on the same day, i.e., on 1.3.2005. On the same day, the plaintiff filed the reply to the review petition. The documents were also filed on the same day and court heard the

arguments on the same day and passed the order in detail on the same day i.e., on 1.3.2005. It appears that review petition was not registered separately. While deciding the review petition very many facts were taken note of by the trial court including the fact that the writ petitions filed by both the parties were dismissed by this Court on 26th Oct., 2004. The trial court observed that it appears that transport authorities were earlier in court ready to furnish undertaking before the trial court that they will release the vehicle on 1.3.205, but without submitting such undertaking on 28.2.2005, left the court. Therefore, it is proved that the Transport Officers, Sri Ganganagar, Jaisalmer, Bikaner and Hanumangarh are deliberately not obeying the order of the court dated 22nd May, 2004.

The above facts are taken note of because of the reason that a suit has been filed for rendition of accounts in a matter relating to tax and in that suit an injunction application was filed and an interim order was passed on plaintiff's application for grant of injunction that till the accounts between the plaintiff and defendants are not understood and settled, the defendant shall not obstruct the plying of the buses of the plaintiff company, which appears to be the relief claimed by the plaintiff in the suit and which has been granted by the trial court even without deciding the injunction application itself and granted relief in ad-

interim order only.

The facts are relevant because of the reason that on 8th July, 2004, the trial court in the order-sheet of the Civil Original Suit recorded that trial court took note of the objection of the learned counsel for the defendants and strangely, the trial court recorded the objection of the learned counsel for the defendants in this way "आपत्ति दर्ज की जाती है " It appears that by now the trial court itself might have forgotten what was the objection taken by the defendant's counsel on 8th July, 2004 much less the fact that this Court can know what was the objection of the learned counsel for the defendant on 8th July, 2004 before the trial court.

In these circumstances, the petitioner has preferred writ petition to challenge the orders of the trial court dated 22.2.2005, 26.2.2005, 2.3.2005 and 26.3.2005.

Learned counsel for the plaintiff vehemently submitted that the plaintiff has not sought any relief, which can be granted under the provisions of the Rajasthan Motor Vehicles Taxation Act, 1961 nor he has sought any determination of the tax liability of the petitioner through court and none of the relief as claimed by the petitioner is falling in any of the category by

which it can be said that the suit of the plaintiff is barred under Section 16 of the said Act. It is also submitted that the action of the officer of the petitioner-defendant is so high-handed, which is apparent from all the events inasmuch as that without determination of tax liability of the plaintiff for the buses in question and without issuing any demand notice, the officer of the defendant-petitioner seized the vehicles of the plaintiff-non-petitioner. It is also submitted that despite opportunities, the petitioner could not produce any of the order creating tax liability of the plaintiff-non-petitioner and the trial court in detail considered all the facts of the case and, thereafter, recorded findings against the petitioner-defendant because of the reason that they could not justify their action nor they could produce any order creating tax liability upon the non-petitioner-plaintiff. It is also submitted that the vehicles were seized months ago and even, thereafter, no assessment order was passed by the authorities. The plaintiff's vehicles were left ideal with the State Authorities and the trial court safeguarded the interest of the State by imposing the condition of furnishing security of Rs. 50 lacs. It is also submitted that even now also no purpose can be served by keeping the vehicles with the petitioner-State. It is also submitted by learned counsel for the non-petitioner-plaintiff that what has been recorded by the trial court in order dated 1.3.2005 is only an inference drawn by the trial court from the

events, which took place before the trial court only. In addition to above, if there was some procedural mistakes, that itself is not sufficient ground by this Court to exercise powers under Article 227 of the Constitution of India as the courts below have passed the order within its jurisdiction and the petitioner has not challenged the order passed on application under Order 7 Rule 11 CPC in time by appropriate proceedings and preferred the writ petition to challenge other order, which was dismissed by this Court. It is also submitted that though the plaintiff's writ petition for release of the vehicle in question was dismissed by this Court, but that was dismissed because of the pendency of the Civil Suit.

I considered the submissions of learned counsel for the parties and perused all the documents including the orders placed on record by the petitioner. It is true that ordinarily when the civil court passes order within its jurisdiction then the High Court under exercise of its extra ordinary jurisdiction under Article 227 of the Constitution of India may not interfere, but at the same time, where the facts are glaring and court finds that High Court should exercise its supervisory jurisdiction looking to the extra ordinary circumstances, there is no bar of jurisdiction for interference in the orders passed by civil court in civil suit, rather some time interference in time by the High Court is

necessary to prevent abuse of process of court.

The order passed by the trial court on application under Section 151 CPC prima facie appears to have been passed in Civil Original Suit and this Court may ignore this serious defect, but at the same time, it cannot be ignored that there was injunction application pending before the trial court, but that was not decided and, therefore, plaintiff relying upon the ad-interim order dated 3.2.2004 could submit the application under Section 151 CPC. The plaintiff for the reasons best known to him, did not file the second injunction petition, if he had any reason to seek another relief in the form of mandatory injunction against the defendant-petitioner. This procedural defect is also ignored and the application filed under Section 151 CPC may be considered to be the application filed under Order 39 Rule 1 and 2 CPC by which the plaintiff sought release of the vehicles, which were seized by the defendant-petitioner on account of any alleged tax dues. From the entire order dated 22.2.2005 it appears that Section 17 of the Act of 1951 itself has not been considered by the trial court, which provides power to seize vehicles by the authorities of the petitioner and which empower the same authorities to release the vehicle and which provides that unless tax due is paid, vehicles shall not be released. Apart from sub-section (3) and (4) of Section 17, which provides that

no transport vehicles seized under sub-section (2) shall be released unless full tax due in respect of such a vehicle has been paid. Not only this, but as per sub-section (4) of Section 17 of the Act of 1951,the plaintiff could have submitted proof of payment of tax before the taxation officer and could have sought relief of release of the vehicle from the said authority. The trial court has not considered any fact or allegation of the even plaintiff about the payment of the tax of the vehicles or whether he submitted proof of payment of tax or dues before the taxation officer and requested for release of the vehicle. The trial court even did not took note of this fact that plaintiff himself in his application dated 18th Dec., 2004 has not came with any case of satisfying the taxation officer for release of the vehicle. The vehicles were already running on the road and were subjected to tax liability under the provisions of the Motor Vehicle Act and after registration of the vehicle and first determination of the tax for the vehicle under Section 4 and 4B of the Act of 1951,the owner of the vehicle can seek revision of rate of tax or exemption from payment of tax because of the contingency as permissible under law.

The Section 17(1) of the Act of 1951 provides that a competent person under sub-section (1) may stop the motor vehicle and keep the vehicle stationary for the purpose of

satisfying itself about the payment of the tax and on finding that tax has not been paid, he under sub-section (2) may seize the vehicle. Therefore, for foundation of the claim for release of the vehicle, proof of payment of tax by the plaintiff is necessary. This aspect was also not considered by the court below. The trial court even, though for the purpose of grant of mandatory injunction should have examined whether it was the initial duty of the plaintiff after registration of his vehicles to suo-motu pay the tax or not? The trial court has not recorded any finding, prima facie, about question of tax paid by the plaintiff.

The trial court though observed that the vehicles were seized, but vehicles have not been seized with the permission or approval of the Commissioner and trial court observed that despite passing of the time, neither the permits were deposited by the defendants-petitioners nor they passed any order of tax determination afresh nor they started proceedings for auctioning the vehicles in question and the trial court also considered that because the vehicles are in possession of the petitioner-defendants,the vehicles lying ideal and it is causing the liability for the plaintiff.

The trial court also not considered that whether the plaintiff could have avoided all these difficulties,which he is

projecting and which could have been avoided by him by making payment of taxes, if due and if not then by preferring the appeal or by adopting any other remedy under the Act of 1951 itself.

The trial court granted relief of mandatory injunction on plaintiff's application under Section 151 CPC, the relief which was specifically refused by the High Court in plaintiff-non-petitioner's own writ petition. Even if arguments of learned counsel for the plaintiff-non-petitioner is accepted that this Court dismissed the plaintiff's writ petition and refused the relief of release of these very vehicles on the ground that the civil suit is pending before the trial court, still that itself cannot be a ground for the trial court without examining the order of this Court dated 26th Oct., 2004 and its effect to grant such relief. Mere mentioning that High Court dismissed the writ petitions on 26th Oct., 2004 is of no consequence and if the trial court was of the opinion that the High Court in the writ petition has refused the relief simply on the ground that relief can be obtained form the trial court, the trial court could have recorded so, which could have been done by specifically recording in the order itself, but that is not the reason given by the trial court. Therefore, it appears that the trial court did not read the order, which was passed by this Court with respect to the same prayer of release of the vehicles and thereby virtually passed the order of release

of the vehicles totally in contravention to the order of this Court passed in plaintiff's writ petition no.4014/2004 dated 26th Oct., 2004. For the order of the trial court passed under Section 151 CPC as there is no other alternate remedy available to the petitioner to challenge the order, which has been passed by the trial court under Section 151 CPC, therefore, the writ petition is maintainable against the order of the trial court dated 22.2.2004 and the circumstances referred above, prick the conscious of this Court and this Court feels that if interference is not made then it will cause injustice more against the interest of justice rather than advancing the justice.

In view of the above discussion, the order dated 22.2.2005 deserves be quashed and set aside and the application filed by the plaintiff under Section 151 CPC deserves to be dismissed, hence dismissed.

The trial court rejected the petitioner's application under Order 7 Rule 11 CPC only by saying that the objections should have been raised by the plaintiff in the written statement so the trial court may decide the issue afterwards. The approach of the trial court was totally contrary to the law laid down by the Hon'ble Supreme Court. It is settled law that the objection against the non-maintainability of the suit can be raised by way

of application under Order 7 Rule 11 CPC even prior to filing of the written statement. Therefore, the order of the trial court dated 26th March, 2004 deserves to be set aside, hence set aside.

Learned counsel for the petitioner prayed that the trial court may be directed to decide the application of the petitioner under Order 7 Rule 11 CPC afresh on the point of maintainability of the suit.

In view of the above discussion, the request of learned counsel for the petitioner is accepted and the trial court is directed to decide the issue of maintainability of the suit, which was raised in the application under Order 7 Rule 11 CPC without going into framing of all the issues because no useful purpose will be served by framing all the issues if they have not been framed by now and the point can be decided on application under Order 7 Rule 11 CPC and if the trial court has framed the issue then issue about jurisdiction be decided as preliminary issue.

In view of the above, the writ petition of the petitioner is allowed. The order dated 22.2.2005 is quashed and set aside and the order dated 26th March, 2004 is also set aside and the

proceedings initiated in pursuance of disobedience of the order dated 22.2.2005, though specifically has not been challenged, is also quashed in peculiar facts and circumstances of this case and because of the reason that petitioner sought quashing of the notice dated 26.2.2005. Both the parties are directed to remain present before the trial court on 9.5.2005.

(Prakash Tatia), J.

c.p.goyal/-